THE HIGH COURT

[2024] IEHC 64

[Record No. 2020/8318P]

BETWEEN

EUGENIE HOUSTON

PLAINTIFF

AND

LEONIE REYNOLDS, IRELAND AND THE ATTORNEY GENERAL

DEFENDANTS

JUDGMENT of Mr Justice Mark Sanfey delivered on the 7th day of February 2024

Introduction

1. This judgment concerns an application by the defendants to strike out the plaintiff's plenary summons and statement of claim and/or to dismiss the plaintiff's action on the grounds that the pleadings disclose no reasonable cause of action and/or the action is frivolous and/or vexatious, or that it is bound to fail and an abuse of process. The defendants seek in the alternative orders pursuant to O.19, r.27 of the Rules of the Superior Courts striking out all indorsements or pleadings that are unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the action.

2. The hearing of the application commenced on 03 October 2023 and, for reasons which I shall explain, resumed on 06 December 2023, on which date I reserved my judgment.

In the course of those two sittings, various other applications were made by the plaintiff and adjudicated upon by me in circumstances which I shall outline.

3. The plaintiff is a barrister practising in this jurisdiction, having been called to the Bar in 2008. At all times, the plaintiff represented herself in these proceedings. The first defendant is a sitting judge of the High Court. The statement of claim describes the second and third defendants as "appropriate persons to be added as defendants when a person holding judicial office is being sued for her conduct".

Background

4. The plaintiff issued the plenary summons on 11 December 2020. The summons stated that the action "arises out of the conduct of Leonie Reynolds **operating as a judge of the High Court** towards the plaintiff in open court … in … actions … in which the plaintiff was acting for herself as a party" [emphasis in original]. The summons sought "from a jury" damages for defamation and trespass to the person, and "from a judge", a number of declarations and claims for damages in relation to the alleged conduct of the first defendant, which it was suggested included "misfeasance in public office" and "stated misconduct". The plaintiff also sought "…a preliminary reference to the Court of Justice of the EU as may be required".

5. While the plenary summons was issued by a firm of solicitors, that firm was subsequently discharged by the plaintiff by a "notice of discharge of solicitors", in which the plaintiff stated that she "is a practising barrister acting in the course of her practice and is not a lay litigant". The plenary summons was served on the defendants under cover of a letter of 02 December 2021. Appearances were entered on behalf of the defendants in January 2022. However, a statement of claim was not expressed as "delivered" until 27 October 2022. This followed the issue by the defendants of a motion to dismiss the proceedings for want of prosecution, which was adjourned on a number of occasions, ultimately coming on for

hearing before the High Court (Cregan J) on 24 October 2022. The defendants contend that they ultimately received a filed statement of claim under cover of an email of 14 November 2022.

6. It was apparent from the statement of claim that the plaintiff's claims arise from her encounters with the first defendant in the course of proceedings entitled "Eugenie Houston v Wendy Doyle practising under the style and title of Wendy Doyle Solicitor, record no. 2017/6661P" ('**Houston v Doyle'**). The plaintiff had appended the transcript of a hearing before the first defendant on 03 December 2019 in that action to her statement of claim in the present proceedings. The defendants identified a further seven dates – 20 May 2019, 25 July 2019, 8 October 2019, 14 November 2019, 1 January 2019, 10 October 2019, and 24 October 2019 – upon which the first defendant presided in the Chancery List in respect of the Houston v Doyle matter, and by a letter of 09 November 2022, informed the plaintiff that it would be applying to the court for the making of an order pursuant to O.123, r.9 of the Rules of the Superior Courts for a transcript of the digital audio recording ('**DAR**') for these dates in the proceedings in the Houston v Doyle matter. The defendants' solicitors proposed that the defendants would fund the application and provide the plaintiff with copies of the transcripts. The plaintiff consented to the application, but requested that, *inter alia*, an application for the "audio" of the various proceedings also be made.

7. On 16 November 2022, the High Court (Cregan J) made an order in respect of the transcript of the DAR for the relevant dates and gave the plaintiff liberty to issue a motion in respect of access to the audio recordings. The court also made an order that the proceedings be subject to case management and made further directions in that regard. On 30 November 2022, the plaintiff issued a motion seeking the audio recording of the various occasions identified by the defendants when the Houston v Doyle matter was before the first defendant.

The present application

8. The defendants' notice of motion issued on 17 January 2023. It was grounded on the affidavit of that date of Natalie Hayes, a solicitor in the office of the Chief State Solicitor. This affidavit set out the circumstances of the proceedings and the pleadings, and the progress of the matter as set out above. There were subsequent affidavits by Ms Hayes (17 April 2023, 19 September 2023) and John Hiney, a solicitor in the Chief State Solicitor's Office (07 March 2023, 20 April 2023, 24 April 2023), which updated the court as regards the correspondence between the parties. The plaintiff also submitted an affidavit sworn on 13 September 2023, which addressed the merits of the defendants' application.

9. In her affidavit of 19 September 2023, Ms Hayes referred to the fact that, pursuant to an order of the High Court (O'Moore J), the relevant excerpts of the Houston v Doyle proceedings were played by a High Court registrar in open court over the course of two days – 07 July 2023 and 14 July 2023 – in the presence of the plaintiff and legal representatives of the defendant. Ms Hayes pointed out that "…the Plaintiff has omitted to identify any aspects or portions of those recordings in her Affidavit, despite having been afforded the opportunity by the Court on 25 July 2023 to deliver an Affidavit in which, *inter alia*, the plaintiff could have addressed any such aspects or portions of the recordings…" [para. 6].

10. When the hearing before me commenced, the plaintiff raised the "possible perception of objective bias", but confirmed that she was not asking me to recuse myself. I assured the plaintiff that I had listened to her concerns "very intently and carefully"; the plaintiff confirmed that she was satisfied that I had taken on board her concerns.

The plaintiff's application for cross-examination

11. Counsel for the defendants made reference to the fact that a "purported notice of cross examination" had been emailed by the plaintiff to the defendants' solicitors on Friday 28 September 2023, three working days before the hearing. Counsel pointed out that the notice was "not in accordance with the rules, it doesn't identify all of the deponents who it is

suggested are to be cross-examined. It doesn't identify all of the affidavits. But perhaps most fundamentally, it is not at all apparent of what factual controversy the plaintiff is alleging arises from anything that is said in any of the affidavits sworn on behalf of the defendants, such as would justify an application to cross-examine any of the deponents" [transcript p.37, lines 19 to 28].

12. Counsel submitted that Ms Hayes, the main deponent to the defendant, had merely set out the procedural history of the present application by reference to events in the present proceedings, and was "not in a position to address any of the events the subject of the Houston v Doyle proceedings which form the basis it appears for each of the claims of the plaintiff in these proceedings…" [p.38, lines 8 to 24].

13. Ms Houston confirmed that she wished to cross examine Ms Hayes as a witness to the playing of the DAR in open court on 07 July 2023 and 14 July 2023; she stated that "…Ms Hayes will be in a position to give evidence to this Court…as to the tone and atmosphere…[of the hearings before the first defendant in Houston v Doyle]" [p.44, lines 13 to 25]. Ms Houston made sustained complaint about the way in which she had been addressed by the first defendant in court, and considered that evidence from Ms Hayes would assist her in establishing her position in that regard.

14. In response to this submission, counsel referred to the fact that Ms Houston had not taken up the court's invitation on 25 July 2023 (O'Moore J) to put on affidavit any aspects of the conduct by the first defendant of the Houston v Doyle proceedings which were of concern to her or which were relevant to the present application. Counsel suggested however that "…in the light of the position adopted by the plaintiff, and conscious of the burden of proof that the defendants bear in the present application, that the court should listen to the entirety of the audio of the Houston v Doyle proceedings…" [p.54, line 29 to p.56, line 8].

15. I asked Ms Houston for her view as to the "proposition put by Mr Clarke [counsel for the defendants] that I should listen to the recording of the conduct of the Wendy Doyle proceedings by Ms Justice Reynolds and then listen to whatever submissions both [of] you have to make?" Ms Houston responded enthusiastically, complimenting Mr Clarke and describing the proposition twice as "a great idea" [p.60, line 24 to p.61, line 7].

16. Accordingly, I indicated that I would adjourn the matter so that I could listen to the DAR of the various hearings of the Houston v Doyle proceedings before the first defendant. However, I indicated to the plaintiff that I required her to write to the solicitors for the defendant:

> The court: "…I need you to identify for the defendants the portions of [the transcript] on which you lay emphasis and to which you intend to refer in your submissions and to set out briefly why you intend to refer to those portions and I will hold you to that, Ms Houston. I want the defendants to know exactly what your case is by the time they come back to court.
>
> Ms Houston: Thank you Judge.
>
> The court: So could you do that by close of business next Tuesday?
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> Ms Houston: Yes, thank you" [p.63, line 2 to 19].

17. Ms Houston – at the prompting of Mr Clarke – confirmed that this arrangement was acceptable to her, and I formally confirmed the directions of the court that Ms Houston "…deliver to the solicitors for the defendants an indication of the portions of the transcript of those hearings on which she proposes to rely in her submissions and the reason that she proposes to rely on them by close of business on Tuesday [10th October] and I will pick a date as soon thereafter [for the resumption of the hearing] as I can that suits all the parties…" [p.63, line 21 to p.64, line 22].

18. The matter came back before the court on Friday 13 October 2023. The plaintiff did not attend on that occasion. Douglas Clarke SC appeared for the defendants. I informed counsel that I had listened to all of the transcripts of the hearings in Houston v Doyle conducted by the first defendant. Mr Clarke stated that the plaintiff had emailed the defendants' solicitors indicating that she wished to file a further affidavit and submissions. I enquired as to whether the plaintiff had complied with my directions as regards notification of the excerpts of the transcripts on which Ms Houston proposed to rely. It appeared that no such notification had been furnished; however, I was informed that the plaintiff had intimated that she "continues to require the opportunity to receive the audio and to be able to take the audio out of the court premises…" [transcript 13 October 2023, p.5 lines, 18 to 29].

19. Having heard further submissions, I fixed the date of 06 December 2023 for the resumption of the defendants' application. I indicated that I would permit the plaintiff to mention the issue of the audio of the Houston v Doyle hearings, but that I considered that I had already dealt with that issue.

20. The matter was mentioned to me in the regular call-over of the following weeks cases on 30 November 2023. Mr Clarke again attended for the defendants, but Ms Houston made no appearance. I asked Mr Clarke whether Ms Houston had complied with my directions of October 03, 2023, in relation to identifying excerpts from the transcripts. Counsel confirmed that she had not. I confirmed that the matter, together with any ancillary applications, would be heard by me on 06 December 2023.

Recusal application

21. At the commencement of the resumption of the hearing of the defendants' motion on 06 December 2023, the plaintiff at the outset made an application to me that I recuse myself from continuing to hear the matter. The plaintiff handed into court an email sent to the defendants' solicitors on 02 October 2023 at 13.36, together with a further email – which Ms

Houston read to the court: see transcript p.4, line 28 to p.9, line 22 – of 04 December 2023 at 16.05. Ms Houston confirmed that her application was on the basis of "objective bias", stating that she was "not in any way suggesting" that I was biased [transcript p.9, line 24 to p.10, line 6].

22. Having heard submissions from counsel for the defendants, I gave my ruling on the application: see p.24, line 25 to p.35, line 18. I referred to the oft-quoted passage from the judgment of Denham J (as she then was); in *Bula Limited v Tara Mines Limited (No. 6)* [2000] 4 IR 412 at 441 – to which Denham CJ herself referred in her subsequent judgment in *Goode Concrete v CRH plc* [2015] 3 IR 493 – at para. 18:

> "…it is well established that the test to be applied is objective, it is whether a reasonable person in the circumstances would have a reasonable apprehension that the applicants would not have a fair hearing from an impartial judge on the issues. The test does not invoke the apprehension of the judge or judges. Nor does it invoke the apprehension of any party. It is an objective test — it invokes the apprehension of the reasonable person".

23. I expressed the view that, applying this test, there were no circumstances to which the plaintiff referred which would give rise to objective bias, and accordingly I refused the application.

Houston v Doyle

24. In order to understand the present application, it is necessary to set out the circumstances of the Houston v Doyle proceedings, as the complaints of the plaintiff in the present proceedings appear to relate in the main to the first defendant's conduct of a hearing on 03 December 2019 in those proceedings; as I have mentioned above, the plaintiff appended a transcript of the hearing before the first defendant on that date to her statement of

claim in the present proceedings, and it is this hearing which appears to form the basis of the plaintiff's claim.

25. The court on that occasion made a number of orders, all of which were appealed by Ms Houston to the Court of Appeal, which gave its judgment on the substantive appeal ([2020] IECA 289, Collins J) on 22 October 2020. In the course of its judgment, the Court of Appeal summarised the relevant facts of the Houston v Doyle matter, and set out the background to the matter as follows:

> "Ms Houston, the plaintiff, is a practising barrister. The defendant, Ms Doyle, is a practising solicitor. These proceedings have their roots in previous proceedings brought by Ms Houston against Ms Doyle. In 2014 Ms Houston issued High Court proceedings (record no. 2014/3904P) in which she sought damages for defamation from Ms Doyle. Those proceedings were settled before hearing on 14 February 2017 and an order was made by the High Court (MacEochaidh J) by consent on that date which (*inter alia*) provided for the payment by Ms Houston of Ms Doyle's costs. The costs payable on foot of that order, as well as two orders for costs that had been made in the course of those proceedings on 27 February 2015 and 12 October 2015, were subsequently taxed by the Taxing Master in a total amount of €58,888.89 and a certificate of taxation in that amount issued on 14 July 2017. None of the cost orders just referred to were appealed (and as already noted the order of 14 February 2017, which accounted for much the largest part of the total costs allowed, was made by consent). Furthermore, while it was open to the plaintiff to carry in objections to the amount of costs allowed by the Taxing Master, she did not do so. [Paragraph 3]".

26. Ms Doyle subsequently registered judgment mortgages against property owned by Ms Houston in Naas County Kildare in respect of each of the orders for costs between June and August 2017. She then brought well-charging proceedings in September 2017 which came on

for hearing before Allen J in the High Court in March 2019. After a contested hearing, Allen J made the orders sought by Ms Doyle, including an order for sale in default of payment.

27. Ms Houston had in fact initiated proceedings against Ms Doyle [record number 2017/6661P] to which I have referred above as "Houston v Doyle". These proceedings sought, *inter alia*, to have the four judgment mortgages registered by Ms Doyle set aside, as well as "declarations that the purported 'orders' underpinning them are void". Ms Doyle took the view that, in light of the judgment of Allen J in the well-charging proceedings, the issues which Ms Houston sought to agitate in Houston v Doyle were *res judicata*, and invited Ms Houston to discontinue those proceedings, failing which she would bring a motion to dismiss them as an abuse of process.

28. Ms Houston did not discontinue those proceedings, and in fact brought an application in October 2019 to change the name/description of Ms Doyle from Wendy Doyle Solicitor to Wendy Doyle practising as Tully Rinckey Solicitors, and to join six individuals who were stated to be partners in that firm. Ms Houston contended that Ms Doyle's practice had been "subsumed and incorporated into Tully Rinckey" in July 2018. Ms Doyle opposed the application, contending that there was no basis upon which the partners of the solicitors firm Tully Rinckey should be joined, and that the application for their joinder was a further abuse of process.

29. On 24 April 2019, Ms Doyle had duly issued a motion applying for an order pursuant to the inherent jurisdiction of the High Court to dismiss Ms Houston's claim as an abuse of process, or on the basis "that it discloses no *bona fide* or stateable cause of action as against the defendants, that it is frivolous and vexatious and that it is bound to fail". The two motions, ie Ms Doyle's application to dismiss, and Ms Houston's application for the joinder of the Tully Rinckey partners, came on for hearing before the first defendant on 03 December 2019.

30. The Court of Appeal, in the opening paragraph of its judgment, summarised the orders made by the first defendant as follows:

> "The Plaintiff appeals two orders made by the High Court (Reynolds J) on 03 December 2019. The first of those orders has a number of elements. First, the Judge refused the Plaintiff's application to recuse herself from hearing the motions before the court. Second, the Judge acceded to the Defendant's application to dismiss the Plaintiff's claim on the ground that it was an abuse of process. Third, the Judge directed the Plaintiff to pay the costs of the motion and the action and refused a stay on that order. Finally, the Judge ordered that the Plaintiff be *'restrained from instituting any further proceedings in the High Court without the prior leave of President of the High Court'* [sic]. By the second order, the Judge struck out a motion brought by the Plaintiff to change the title to the proceedings and join a further six Defendants, those proposed Defendants being partners in a firm of solicitors, Tully Rinckey, in which the Defendant had been a partner for a time. The Judge also made an order for costs in favour of the firm, measuring those costs in the sum of €1,200 plus VAT. Again, the Plaintiff's application for a stay on that order for costs was refused". [Emphasis in original]

31. At para. 73 of the Court of Appeal judgment, Collins J summarised the disposition of the appeal as follows:

> "For the reasons set out above, I would:
>
> • Dismiss Ms Houston's appeal from the Judge's refusal to recuse herself
>
> • Dismiss Ms Houston's appeal from the order dismissing the proceedings
>
> • Allow Ms Houston's appeal from the *Isaac Wunder* order and set aside that order

• Dismiss Ms Houston's appeal from the order striking out the joinder application

• Affirm the orders for costs made by the judge."

32. In its judgment, the Court of Appeal made some significant findings and pertinent observations in relation to what had occurred in the hearing before the first defendant on 03 December 2019, and I shall refer to those matters later in this judgment.

The plaintiff's claims

33. In advance of the hearing of the application on 03 October 2023, the defendants had delivered very extensive written submissions outlining the legal basis for the application. While Mr Clarke formally adopted those submissions in support of the application at the hearing – see p.33 of the transcript, lines 3 to 6 – the submissions made by counsel at the hearing focused on a forensic analysis of the allegations made against the first defendant, cross referenced to specific pleas in the statement of claim and to documents referred to therein. The analysis also referred to the alleged intent and purpose of the first defendant as set out in the statement of claim.

34. The statement of claim, in addition to the claims to which I have referred briefly at para. 4 above, included a number of specific complaints about the conduct of the first defendant that may be summarised as follows:

(1) That the first defendant abused her position and participated in a "fundamental denial of constitutional justice" by imposing an *Isaac Wunder* order on the plaintiff;

(2) that in refusing to resign as a judge when requested to do so by the plaintiff, the first defendant "did not dispute that her conduct merited resignation…";

(3) that the first defendant:

(a) *de facto* brought the Wendy Doyle application herself;

(b) wrongly denied the plaintiff leave to "bring an *ex parte* application" [to join the Tully Rinckey partners as defendants in Houston v Doyle];

(c) "… gave the plaintiff leave to bring a motion instead of the *ex parte* application…"

(d) "directed or oversaw the unlawful retention of the plaintiff's funds…" relating to the application in Houston v Doyle on 25 July 2023; and

(e) "falsely stated that she was unaware that the plaintiff might bring an *ex parte* application in the non-jury list when the plaintiff had expressly informed her that this was an option…"

[All allegations at para. 45 of the statement of claim].

(4) that the first defendant should have heard the plaintiff's motion to join the Tully Rinckey partners as defendants in Houston v Doyle on 03 December 2019 before the strike out motion of Ms Doyle and should have acceded to the plaintiff's joinder motion;

(5) that the judgment delivered on 03 December 2019 was *ex tempore*;

(6) that the first defendant allegedly compelled the plaintiff to accept service of the strike out motion of Ms Doyle in Houston v Doyle in court on 20 May 2019;

(7) that the first defendant

(a) should have struck out the strike out motion of Ms Doyle in Houston v Doyle on 08 October 2019;

(b) directed the plaintiff on 08 October 2019 to email Ms Doyle's solicitor in relation to a new hearing date for the strike out motion of Ms Doyle in Houston v Doyle; and

(c) thus *de facto* brought the strike out motion of Ms Doyle in Houston v Doyle [these allegations at paras. 35 and 36 of the statement of claim].

(8) that the first defendant disapplied binding European law in the hearing in Houston v Doyle on 03 December 2019 [para. 45 of the statement of claim];

(9) that the first defendant "treated a non-existent order (the stayed order) as extant" in Houston v Doyle on 03 December 2019.

35. Counsel for the defendants dealt with each of these claims in turn, but made an overarching point in his oral submissions before doing so:

> "All such decisions and orders of the first defendant were at all times amenable to appeal and the option of an appeal provided a sufficient and complete remedy for the plaintiff in connection with all of the factual allegations against the first defendant and on that basis alone the proceedings are frivolous, vexatious and [an] abuse of process and should be dismissed [p.66, lines 2 to 8]".

The Isaac Wunder Order

36. The point made by counsel is relied upon particularly in relation to the plaintiff's claims in relation to the *Isaac Wunder* order. It is submitted that the remedy in respect of the first defendant's order in this regard was an appeal; the plaintiff availed of this remedy and was successful in the Court of Appeal and, as counsel submitted, "…that is the beginning and end of any complaint that can be made in connection with the making of that order…" [p.80, lines 17 to 19].

37. The making of the *Isaac Wunder* order appears to be what prompted the plaintiff's reference to the first defendant's resignation: "…there is [sic] no grounds for you to apply an *Isaac Wunder* order and I will be seeking your resignation, judge…". The first defendant indicated that she would "be refusing you my resignation, Ms Houston…", and pointed out that the first defendant had a right of appeal against the court's decision which, as we have seen, the plaintiff duly exercised successfully: see p.40 of the transcript of 03 December 2019. There is no suggestion that the first defendant "did not dispute that her conduct merited

resignation…"; the first defendant, as the transcript shows, very clearly took the opposite view.

38. At para. 60 of his judgment, Collins J observed that the plaintiff "was very critical of the *Isaac Wunder* order…", and that "…Ms Houston stated that the order had made her an "unperson" and emphasised the fact that it had been made without any notice to her. That, she submitted, amounted to a "fundamental denial of constitutional justice". Collins J however went on to find that "…the authorities clearly establish that the Superior Courts have jurisdiction to make such an order in an appropriate case…Ms Houston's submission that such orders are 'unconstitutional simpliciter' must therefore be rejected…" [para. 63].

39. Counsel in the present case referred to the decision of the Court of Appeal in *O'Callaghan v Ireland and the Attorney General* [2020] IECA 180, a case in which the Court of Appeal considered an appeal against a decision of the High Court declining to award damages to the plaintiff in respect of an alleged breach of the right to trial with reasonable expedition and, also declined to award damages in respect of a claim of miscarriage of justice.

40. In the course of that judgment, the Court of Appeal addressed the decision in *Kemmy v Ireland* [2009] 4 IR 74, a case in which the plaintiff claimed damages against the State for infringement by the State of the plaintiff's constitutional right to a fair criminal trial. The Court of Appeal in *O'Callaghan* (Ní Raifeartaigh J) stated as follows:

> "63. Dismissing the action, the High Court (McMahon J) rejected arguments based on vicarious liability and primary liability. For present purposes, it is interesting to note that while he engaged in an extensive examination of the principle of judicial immunity and its connection to the fundamental value of the independence of the judiciary, he also said that the State's duty to guarantee the plaintiff the right to a fair trial was not an absolute one but a duty to respect, defend and vindicate the right as

far as practicable. He said that the State had acted reasonably to guarantee this right by enacting legislation establishing the Court of Criminal Appeal to which convicted persons could appeal, and the Criminal Procedure Act, 1993 which enabled a trial to be reviewed if new evidence subsequently came to the light. In arguing that the State was directly or primarily liable in the situation of an unfair trial caused by judicial error, the plaintiff could not limit the phrase 'unfair trial' artificially to the trial stage of the process. Consideration had to be given to the totality of the legal process from start to finish, and the Court of Criminal Appeal had, in effect, made fair that which had been unfair. In this sense, the obligation to provide a fair trial should more properly be referred to as an obligation to provide a fair legal system, and by providing an appeal system, the State had carried out its duty in this respect. The time to assess the fairness of the process was after the appeal and not after the trial. McMahon J said:

> '[66] The State cannot guarantee that no error will ever occur in the judicial process. The judges it appoints are human and inevitably will make mistakes. In these circumstances, it is incumbent on the State to provide for a corrective mechanism to address these errors. This is the appeal process. In my view, failure by the State to do so would be a breach of its obligations to guarantee 'as far as practicable' the citizen's right to a fair trial. But by doing so, the State fulfilled its obligation under the Constitution'".

41. Ní Raifeartaigh J went on to comment as follows:

"66. In my view, it is significant that McMahon J did not rest his conclusion entirely upon the principle of judicial immunity; as is clear from the above, he also rested it (effectively in the alternative) on the proposition that the right to a fair trial does not provide a guarantee of a perfect trial at first instance but rather a guarantee that the

State will put in place a process which in its totality is fair, i.e., when one considers the totality of the process *including the appellate stage*. Therefore, insofar as the appellant in the present case seeks to suggest that the reasoning in *Kemmy* has been overtaken and undermined by certain European decisions concerning judicial immunity, it is important to bear in mind that judicial immunity is not the sole basis on which the conclusion in *Kemmy* was reached." [Emphasis in original]

42. Ni Raifeartaigh J went on to say as follows:

"67. I do not find anything in the jurisprudence of the European Court of Human Rights which is of assistance to the appellant in undermining the rationale in *Kemmy* that the obligation of the State is to provide an appropriate scaffolding, which falls to be assessed in its entirety (i.e., including the appellate process). The Convention does not confer a cause of action simply on the basis of a judicial error at first instance, even if it was an error of a kind which means that he should never have been imprisoned at all…".

43. In the present case, the Court of Appeal held that the making of the *Isaac Wunder* order was an error on the part of the court, and duly corrected that error to the advantage of the plaintiff. There is no possible basis upon which the original order can give rise to any further cause of action in favour of the plaintiff, much less any basis for suggesting that the making of the order requires the resignation from office of the first defendant.

Complaints in relation to the conduct of the Tully Rinckey application

44. As we have seen, a number of complaints were made by the plaintiff in relation to the handling by the first defendant of her application to join the 6 partners of Tully Rinckey ('**the Tully Rinckey defendants**'). The order made by the first defendant on 03 December 2019 striking out the plaintiff's motion to join the Tully Rinckey defendants was appealed to the Court of Appeal, which affirmed the High Court order. Some of the complaints now made by

the plaintiff were in fact specifically addressed by the Court of Appeal. For instance, in relation to the allegation that the first defendant "wrongly denied the plaintiff leave to bring an *ex parte* application" and "gave the plaintiff leave to bring a motion instead of the *ex parte* motion", Collins J stated as follows:

> "14. It appears that on 25 July 2019 Ms Houston made an *ex parte* application to join additional defendants to her claim. Having considered the papers, Reynolds J declined to make the order sought and instead directed Ms Houston to issue and serve the motion. Though this order was not appealed by Ms Houston, she nonetheless criticised the judge's approach to what she characterised as a *'simple procedural matter'*. Such criticism is, in my opinion, misplaced. The judge was entitled to direct the bringing of a formal joinder application in the circumstances here and was also entitled to direct that the application be served on the proposed additional defendants as well as on Ms Doyle".

45. The allegation that the first defendant "directed or oversaw the unlawful retention of the plaintiff's funds" – see section 3(d) of para. 34 above – appears to relate to the complaint that the first defendant directed the bringing of a motion with the result that the plaintiff could not avail of stamp duty already paid in respect of the *ex parte* application on foot of which the plaintiffs had proposed to proceed: see the transcript of the hearing of 25 July 2019 at p.5. The plaintiff's characterisation of the first defendant's action as quoted above is therefore a grossly misleading and inaccurate description of what actually occurred. In any event, as Collins J points out, the plaintiff did not appeal the order made by the first defendant on this date.

46. The allegation that the first defendant "falsely stated that she was unaware that the plaintiff might bring an *ex parte* application in the non-jury list when the plaintiff had expressly informed her that this was an option" is not understood; to the extent that it relates

to the order by the first defendant made on 25 July 2019 to the plaintiff to issue a motion on notice rather than rely on an *ex parte* application, that order was not appealed, and the plaintiff is not entitled to raise any issue in relation to that order at this stage.

47. In relation to the allegation that the first defendant should have heard the Tully Rinckey motion before the strike out motion on 03 December 2019, the Court of Appeal addressed this at para. 43 of its judgment:

> "Before leaving this issue, I should address the complaints made by Ms Houston about the hearing on 03 December. According to her, the Judge had previously indicated that the joinder application would be dealt with before the application to dismiss and she complains about the fact that this sequence was reversed when the motions came to be heard on 03 December. Even if it is the case that the Judge had previously indicated an intention to hear the joinder application first, she was fully entitled to take a different view on 03 December and I can readily understand why the Judge considered that it made sense to hear the application to dismiss first (quite apart from the fact that it was first in time). As regards the hearing more generally, it is evident from the transcript that the Judge pressed Ms Houston to explain the basis for the allegation of actual bias. The Judge was perfectly entitled to do so. She could not properly adjudicate on the recusal application without knowing the basis for it. If Ms Houston was surprised to be questioned in that way, she had no right to be. The Judge also pressed Ms Houston to explain the nature and basis of the claim she sought to make against Ms Doyle. Again, she was perfectly entitled to do so, given the uninformative terms of the pleadings and the affidavits that Ms Houston had sworn. In my opinion, there is no basis for any suggestion that the hearing in the High Court was unfair."

48. The Court of Appeal went on to deal with the merits of the High Court decision to strike out the motion to join the Tully Rinckey defendants:

> "58. Having decided that the proceedings should be dismissed, the Judge was entitled to take the view that it followed that the joinder application had to be refused.
>
> 59. Even if there had never been an application to dismiss the proceedings, or if the joinder application had been heard in advance of that application, it would inevitably have been refused. At the time that the joinder application issued, [Ms Doyle] was not a partner in Tully Rinckey. More importantly, the costs orders which Ms Houston sought to challenge were made in favour of Ms Doyle personally and the judgment mortgages were registered in her name. As Allen J had explained in his judgment in the well-charging proceedings, *'the fact that Ms Doyle was a member of a particular firm of solicitors at any time is irrelevant on the face of the orders'*. Tully Rinckey had no involvement whatever in the issues between Ms Doyle and Ms Houston. Even on the premise that Ms Houston had an entitlement to challenge the costs orders and/or the judgment mortgages, the correct defendant in any such challenge clearly was Ms Doyle (and Ms Doyle only). Ms Houston must have been aware that she had no cause of action or claim against Tully Rinckey and her affidavit grounding the joinder application did not identify any plausible basis for that application. Whatever may have been Ms Houston's motivation in seeking the joinder of Tully Rinckey, the fact is that the application was devoid of any legal or factual foundation". [emphasis in original]

The judgment was *ex tempore*

49. The plaintiff complains that the first defendant gave an *ex tempore* judgment "…failing to provide either a written judgment or a copy of the DAR…thereby leaving the plaintiff with no alternative to pay to beg for justice and then to pay for the transcript by

entering involuntarily into a third-party provider contrary to EU consumer law…" [para. 25 statement of claim].

50. The delivery of High Court judgments *ex tempore* is an everyday occurrence in the courts. Where a judge is in a position to give a judgment without the delay of committing it to writing, she will do so, thus giving the parties a decision without the necessity of waiting for that decision to be committed to paper. Counsel or solicitors attending the delivery of *ex tempore* judgments are practised at recording the essential points of such a judgment, a fact which would be well known to the plaintiff.

51. Where the litigant does require a written record of the proceedings, including the judgment, in the Superior Courts, they may apply for a transcript in accordance with O.123, r.9 of the Rules of the Superior Courts. The transcript of the hearing of 03 December 2019 was available to the parties and the Court of Appeal in *Houston v Doyle*, with Collins J concluding at para. 43 of its judgment – as we have seen – that "in my opinion, there is no basis for any suggestion that the hearing in the High Court was unfair". Likewise, there is no conceivable basis on which it could be said that the delivery of an *ex tempore* judgment by the first defendant was unfair.

The plaintiff was compelled to accept service of the strike out motion

52. At para. 34 of the statement of claim, the plaintiff alleges that the first defendant "abused her position as a judge to compel the plaintiff herein to accept service in court". It is suggested that this occurred at the hearing on 20 May 2019.

53. The transcript of the DAR for that date contains the following exchange: -

"Judge: Yes. Well, Ms Houston, do you wish to be served by the solicitor this morning or do you wish them posted to your office?

Ms Houston: I want them, Judge, I regret that with respect, it appears that this person is – their [sic] being awarded for not –

Judge: Sorry, Ms Houston. I asked you a simple question; how would you like to be served with the papers? Are you going to accept a booklet of the papers today?

Ms Houston: Yes. Yes, Judge.

Judge: You will. Well then, is your solicitor in court? [This question apparently directed to counsel for the defendant]

Mr Brady [Counsel for the Defendant]: Mr Brennan is in court, judge. Yes.

Judge: Mr Brennan, well then perhaps you might serve Ms Houston in court so there is no issue going forward with the booklet of papers.

Ms Houston: And when will the matter be heard, Judge?"

54. This exchange speaks for itself. Ms Houston was asked whether she would accept service in the court. She agreed to this. There is no basis whatsoever for characterising this exchange as an abuse of the first defendant's position, or indeed that the plaintiff was compelled to accept service in court. In any event, even if the allegation could be substantiated in some way, the proper course was to raise the issue and the service of the strike out motion generally in the plaintiff's appeal to the Court of Appeal. The plaintiff did not do so.

Issue regarding the hearing on 08 October 2019

55. At para. 35 of the statement of claim, the plaintiff refers to the hearing on 08 October 2019. It is alleged that, as there was no appearance by the moving party, the motion should have been struck out. It is alleged that the first defendant "abused her position as a judge" by "directing the plaintiff herein to email Wendy Doyle's solicitor…and inform him of a new date to hear the motion".

56. The transcript of the DAR for that occasion includes the following exchange:

"Judge:	Now, in respect of this application here today – yes, well, there doesn't appear to be any appearance on the other side. I understand it's in for an application for a date; is that correct?
Ms Houston:	That's what's on the list, judge, that's what's on the list; it's listed for a date.
Judge:	To get a hearing date? Well, in the ordinary course, I give out dates on Thursday, so I'll adjourn it into the list to fix dates on Thursday. Perhaps, Ms Houston, as a matter of courtesy, you might indicate to the solicitors for the defendants that I have adjourned the matter into Thursday's list to fix dates?
Ms Houston:	Certainly, absolutely, Judge. And, Judge, there is a procedure when a matter is before the court for either of the parties to ask for a copy of the audio. So, I would ask the court if I could have a copy of the audio of what has transpired today.
Judge:	Just now?
Ms Houston:	Yes. May it please the court.
Judge:	Yes. Well, you can make that application on Thursday when the other side are present. No difficulty in dealing with that.
Ms Houston:	May it please the court".

[Transcript of 08 October 2019, pp. 2-3]

57. The plaintiff alleges that the first defendant should have struck out the strike out motion when there was no appearance for the defendants on 08 October 2019. It appears that she considers now that this should have been done by the first defendant of her own motion; the plaintiff does not allege that she applied to have the defendant's motion struck out. As the passage above shows, the issue before the court was the allocation of a date for the hearing of

the strike out motion, a matter which would normally be heard by the Chancery Judge in charge of the list during the weekly list to fix dates. As this was on another day, the judge simply transferred the matter to the list to fix dates and asked the plaintiff to inform the defendant's solicitors that this had been done. This was readily accepted by the plaintiff.

58. This entirely unexceptionable exchange is now characterised by the plaintiff as an abuse of the first defendant's position, and it is suggested at para. 45 of the statement of claim that the first defendant "*de facto* brought the Wendy Doyle application herself". The facts do not remotely support or suggest this interpretation. Even if there were some basis for this assertion, the question of whether or not the strike out motion should itself been struck out by the trial judge was properly a matter for the plaintiff's appeal. There is no suggestion in the Court of Appeal judgment that this issue was raised or canvassed at the appeal hearing.

The first defendant disapplied binding European law

59. While it is alleged at para. 45 of the statement of claim that the first defendant "…used and abused her position on 03 December 2019 including … by disapplying binding European law", no further detail is given by the plaintiff as to how she alleges this occurred. In any event, as the defendants point out, if the plaintiff considered that the first defendant had erred in her application – or disapplication – of any principle of European law, or erred in any other respect, that was a matter which the plaintiff should have canvassed on appeal. She did not do so.

"Treated a non-existent order as extant"

60. At para. 45 of the statement of claim, it is alleged that the first defendant "used and abused her position on 03 December 2019 including by treated [sic] a non-existent order (the stayed order) as extant…". This Court does not have the benefit of any submission, either written or oral, by the plaintiff to throw light on this allegation. Counsel for the defendants, in his oral submissions, asserted that "this contention is rooted in a mischaracterisation of an

order made by Judge Allen, which had been stayed pending [an] appeal to the Court of Appeal as a non-existent order and one which should not have been treated as extant" [Transcript, 06 December 2023, p.108, lines 1 to 5].

61. It appears that an application was made to the Court of Appeal for a stay on the order made by Allen J in the proceedings by Ms Doyle against Ms Houston [Record No. 2017/377SP]. By order of 11 October 2019, a stay was granted on the order until the date of hearing of Ms Houston's appeal of the order of Allen J, which was to be heard on 05 February 2020. This order was made by consent. While the order of Allen J was stayed, it was of course not a "non-existent order", and indeed was the subject of an appeal by Ms Houston, which was ultimately resolved in Ms Doyle's favour.

62. The first defendant, in her ruling of 03 December 2019, did express a view on the effect of the Houston v Doyle proceedings on orders made by other courts:

> "…But effectively what's now before me clearly seems to me to be a collateral attack on all of these other proceedings that have been determined by other courts or indeed outstanding matters that are pending by way of appeal, but certainly does not give rise to any new cause of action where effectively what is sought to be determined again by this Court are issues that have already been dealt with by other courts, not just of this jurisdiction but it would appear of other jurisdictions. In the circumstances, I am satisfied that these proceedings have effectively been brought for an improper purpose of trying to re-litigate matters that are *res judicata*. Further, I am satisfied they're an abuse of process, they reveal or disclose no *bona fide* or stateable cause of action and they are frivolous and vexatious and bound to fail and in all the circumstances I am satisfied they need to be dismissed…". [Transcript p.37, line 29 to p.38, line 6]

63. Express reference was made by Collins J to this section of the first defendant's ruling at para. 27 of the Court of Appeal judgment. The first defendant's ruling was expressly upheld by the Court of Appeal:

> "54. The Judge concluded that these proceedings amounted to a collateral attack on the costs order. That conclusion was inevitable, in my view. They are also a collateral attack on the judgment mortgages registered against Ms Houston's property in Co. Kildare and on the orders made in the Well-charging proceedings. Insofar as the pleadings disclose any ground for Ms Houston's challenge to the orders and the judgment mortgages, those grounds appear to be the same as those on which she unsuccessfully defended the Well-charging proceedings against her…".

64. Therefore, the suggestion that the first defendant "used and abused her position" by treating "a non-existent order (stayed order) as extant" is utterly misconceived, has been addressed by the Court of Appeal, and in any event is clearly an attempt to re-litigate matters resolved by another court.

Legal principles: the jurisdiction to dismiss

65. The jurisdictions to dismiss the plaintiff's proceedings set out in the notice of motion, which I have summarised in the first paragraph of this judgment, have been analysed so comprehensively in a series of decisions of the Superior Courts, and are so clear and well-established as to make repetition of the principles scarcely necessary. Those principles were set out by the defendants in their written submissions, and no exception to this summary was taken by the plaintiff in either her oral or written submissions. In order therefore to provide some context to the decision to be made by this Court, I shall set out very briefly the basis upon which the court approaches the defendant's application.

66. In *Fay v Tegral Pipes Limited* [2005] 2 IR 261, the Supreme Court identified the two bases upon which an application to strike out or dismiss proceedings may be brought. The court referred to the provisions of O.19, r.28 of the Rules of the Superior Courts 1986:

> "The Court may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just."

67. The court also pointed to the inherent jurisdiction to stay, strike out or dismiss pleadings where no cause of action is disclosed or if the claim is frivolous or vexatious. McCracken J, on behalf of the court, set out the rationale for the jurisdiction as follows:

> "While the words 'frivolous and vexatious' are frequently used in relation to applications such as this, the real purpose of the jurisdiction is to ensure that there will not be an abuse of the process of the courts. Such abuse cannot be permitted for two reasons. Firstly, the courts are entitled to ensure that the privilege of access to the courts, which is of considerable constitutional importance in relation to genuine disputes between parties, will only be used for the resolution of genuine disputes and not as a forum for lost causes which, no matter how strongly the party concerned may feel about them, nevertheless have no basis for a complaint in law. The second and equally important purpose of the jurisdiction is to ensure that litigants will not be subjected to the time consuming, expensive and worrying process of being asked to defend a claim which cannot succeed". [At p.266].

68. As regards O.19, r.28, the courts have repeatedly emphasised the need for caution in utilising this jurisdiction: see in particular *Aer Rianta v Ryanair* [2004] 1 IR 506 at 509 per

Denham J. The defendants in the present case cite *Mangan v Dockery* [2020] IESC 67, in which the Supreme Court (McKechnie J) observed as follows:

> "58. The manner in which a motion issued under O.19, r.28 RSC will be resolved is quite particular. First and foremost, it must be determined solely by reference to the pleadings, meaning that, as described in O.125, r.1 RSC, it must be decided only by what is stated in the originating summons, statement of claim, defence, counter-claim, reply, petition or answer as the case may be…
>
> 59. An obvious but significant consequence of this approach is that an examination of the underlying evidence, said to exist in support of the allegations of negligence, is not conducted. This in contrast to a situation where the moving party intends to invoke the inherent jurisdiction of the court…"

69. As regards the inherent jurisdiction of the High Court to dismiss proceedings, this exists where a claim has no reasonable prospects of success, is bound to fail and/or is an abuse of the process of the court. In *Keohane v Hynes* [2014] IESC 66, the Supreme Court (Clarke J as he then was) emphasised that "the extent to which it is appropriate for the court to assess the evidence and the facts on a motion to dismiss as being bound to fail is extremely limited…" [Para. 6.2] However, Clarke J stated that the court "can analyse … whether a plaintiff's factual allegation amounts to no more than a mere assertion, for which no evidence or no credible basis for believing that there could be any evidence, is put forward…". The court can however examine documents "…where the relevant documents … form the only possible evidential basis for the plaintiff's claim …" [Para. 6.10]. Clarke J went on to state as follows:

> "It is an abuse of process to bring a claim based on a breach of rights or failure to observe obligations where those rights and obligations are defined by documents and where there is no reasonable basis for suggesting that the relevant documents could

establish the rights and obligations asserted. Likewise, it is an abuse of process to maintain a claim based on facts which can only be established by a documentary record and where that record could not sustain any necessary part of the factual assertions which underlie the case. Finally, it is an abuse of process to maintain a claim based on a factual assertion in circumstances where there is no evidence available for that assertion and, importantly, where there is no reasonable basis for believing that evidence could become available at the trial to substantiate the relevant assertion". [At 17].

70. The plaintiffs also invoke the jurisdiction under O.19, r.27, which provides as follows: "The Court may at any stage of the proceedings order to be struck out or amended any matter in any indorsement or pleading which may be unnecessary or scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of the action; and may in any such case, if it shall think fit, order the costs of the application to be paid as between solicitor and client".

The parties' approaches to the present application

71. The defendants, in support of their application, delivered extremely comprehensive and lengthy submissions in advance of the hearing on 03 October 2023. These submissions dealt with the issues and background to the matter; a consideration of the legal principles applicable to such applications, and extensive analysis of the factual pleas in the statement of claim; and an even more extensive analysis of the purported causes of action set out in the statement of claim.

72. These submissions were supplemented by detailed oral submissions from Mr Clarke at the hearing of the application. Counsel presented a forensic analysis of the allegations made; no exception was taken by Ms Houston to the way in which this was presented by Mr Clarke, and as I have found that the identification and classification of the issues as distilled

from what, it must be said, is a somewhat rambling and confusing statement of claim, is accurate and comprehensive, I have followed that approach in this judgment in analysing the allegations made by the plaintiff.

73. It is necessary to say something about the content of the statement of claim, and the way in which the allegations in that document are framed. The statement of claim is replete with references to persons who are not parties to the litigation and who have no conceivable connection with it. Gratuitous, unwarranted and objectionable allegations are made against many of these persons. Counsel for the defendant, in my view appropriately, simply did not refer to these matters in his submissions, and I have not considered them in coming to my decision on the application, although they are clearly such as would attract the exercise of the court's jurisdiction to strike out any such pleading under O.19, r.27.

74. As regards the first defendant, in addition to the alleged failure to adhere to alleged obligations under the Constitution, and various treaties including – bizarrely – the Belfast Agreement, it is suggested that the first defendant defamed the plaintiff and committed a trespass on her person. She is repeatedly accused of abusing her position as a judge, and being guilty of "a conscious and deliberate breach of her own binding obligations on a judge", "…misfeasance in public office", and "stated misconduct". It is further asserted that this Court should make "an order that the Ceann Comhairle of Dáil Éireann formally be informed that the conduct of Reynolds J is capable of grounding a motion for her removal as a judge by the Oireachtas" [para. 50]. While I have considered these allegations fully in the context of the defendants' application, I have chosen to ignore, in coming to my decision, the many personal, gratuitous and very unpleasant remarks in the statement of claim about the first defendant and, at one point, a deceased close relative of the first defendant who is entirely unconnected with the proceedings.

75. In response to the written submissions of the defendants, the plaintiff delivered her own written submissions. These consisted of two pages – 630 words to be precise – of which the substantive paragraphs were as follows:

> 3. "In respect of the Defendants' application to strike out the action, the Plaintiff seeks that a preliminary reference be made to the Court of Justice of the European Union. In respect of the Defendants' application to remove the Plaintiff's right to access justice, the Plaintiff seeks a preliminary reference to the CJEU. If the court does not accept that it is bound by the jurisprudence of the CJEU on the application of GDPR, notwithstanding that the issue is '*acte Clair*', if necessary in respect of her application for the audio of the DAR, the Plaintiff will seek a preliminary reference to the CJEU.
>
> 4. The Plaintiff will rely *inter alia* on the Treaties, the Belfast/ Good Friday Agreement, the law and case law of the European Union including the GDPR and the case law on the application of the GDPR. In particular in respect of the audios of the DAR, the Plaintiff will rely on Case C-268/21*, Norra Stockholm Bygg (Norra)* including the Opinion of Advocate General Capeta delivered on 6 October 2022 in which the Advocate General sets out the specific steps to be taken by the national court.
>
> 5. In respect of Rules of the Superior Courts and all and any other legislation that restricts access to justice in any form including but not limited to access to the audio of the DAR, the Court is asked to disapply each and all rules of the Superior Courts that permit the restriction and/ or discriminatory application of access to justice including but not limited to GDPR on the grounds that such rules are not in compliance with European law. A Judge of the High Court holds a statutory office;

the officeholder is a statutory entity and is bound by the decision of the Court of Justice of the European Union ("CJEU"), Grand Chamber, delivered on 4 December 2019 in case **C-378/17, Minister for Justice and Equality, Commissioner of An Garda Siochána v Workplace Relations Commission (Notice Parties: Ronald Boyle and Others)**, from which decision is derived the jurisdiction of the High Court as a statutory body to disapply a rule of national law that is contrary to EU law. This was a preliminary reference from Ireland's Supreme Court. On foot of the decision delivered in the CJEU in **Case C-378/17, Workplace Relations Case,** the High Court, as a so-called 'creature of statute', **has jurisdiction to disapply** a rule of national law that is incompatible with EU law. As the jurisdiction of a statutory body to disapply national law that is not in compliance with European law is now 'acte Clair' in consequence of the decision of the CJEU in **Case C-378/17, Workplace Relations Case**, there is no requirement for the Superior Courts in Ireland to revisit this issue.

6. It is the Plaintiffs submission that when the Court is asked to disapply a statutory provision including a Rule of Court on the ground that is incompatible with European law, it **must** do so as the officeholder — the Judge — has additional binding obligations arising out of the constitutional Oath that the Judge has taken. **The Oath** distinguishes the judicial statutory officeholder from other statutory officeholders to whom the law in the *Workplace Relations Case* applies e.g. Adjudicators at the Workplace Relations Commission. The exercise of inherent jurisdiction need not arise." [Emphasis in original]

76. The oral submissions of the plaintiff at the hearing of the defendants' application took approximately ten minutes. The plaintiff did not engage with the substance of the defendants'

application at all. There was no dispute in relation to the defendants' analysis of the allegations, the points made in relation to them, or as to the applicability of the caselaw to the defendants' application. The plaintiff made no attempt to identify the portions of the various transcripts of hearings before the first defendant in the Houston v Doyle proceedings which she contended supported her various allegations against the first defendant, notwithstanding that I had very clearly required her to do so when the matter was before me on 03 October 2023, following the invitation likewise by O'Moore J to the plaintiff to do so on 25 July 2023.

77. The main thrust of the very brief oral submissions of the plaintiff – see pages 121 to 129 of the transcript – was to ask the court "to refer a question to Europe as to whether the court retains an inherent jurisdiction and if so, what is that jurisdiction for? Is it entitled to remove rights that are guaranteed in the Treaties? Is it entitled to remove rights at all? ... until that has been determined the court should not use its jurisdiction, its inherent jurisdiction to take away a right". [Page 127 lines 3 to 12].

78. Ms Houston went on to ask the court "to refer to Europe the question of whether the court has an inherent jurisdiction following the entry of Ireland into the European Union". On being pressed by the court to provide some clarity as to the nature of the inherent jurisdiction thus challenged, Ms Houston said "…in terms of taking away a right before that right has been used, that is very draconian and is contrary to the founding principles of the European Union…" [p. 128]. However, when I asked the plaintiff whether "…what you're asking to be referred is the question of whether or not this Court is entitled to exercise its inherent jurisdiction to dismiss an action on the basis that it is frivolous and vexatious, or an abuse of process…", she replied "well, I think that's a bit of an oversimplification". [Page 127, lines 13 to 20].

79. Given that the plaintiff did not engage with the legal or factual analysis proffered by the defendants, I do not propose to record or deal in any detail with the submissions made on behalf of the defendants. Counsel referred in particular to the judgments of the Supreme Court in *Fay v Tegral Pipes Limited* [2005] 2 IR 261; *Lopes v The Minister for Justice Equality and Law Reform* [2014] 2 IR 301; *Keohane v Hynes* [2014] IESC 66; and *Moylist Construction Limited v Doheny* [2016] 2 IR 283. In particular, counsel relied on the guidance supplied by Clarke J (as he then was) in *Lopes* as to how the principles should be applied where a defendant sought to dismiss proceedings as in the present case. Clarke J referred to the jurisdiction under O.19, r.28 of the Rules of the Superior Courts and the inherent jurisdiction of the court, and at para. 17 commented as follows:

> "The distinction between the two types of application is, therefore, clear. An application under the RSC is designed to deal with a case where, as pleaded, and assuming that the facts, however unlikely that they might appear, are as asserted, the case nonetheless is vexatious. The reason why, as Costello J. pointed out in his judgment in *Barry v Buckley* [1981] IR 306, an inherent jurisdiction exists side by side with that which arises under the RSC is to prevent an abuse of process which would arise if proceedings are brought which are bound to fail even though facts are asserted which, if true, might give rise to a cause of action. If, even on the basis of the facts as pleaded, the case is bound to fail, then it must be vexatious and should be dismissed under the RSC. If, however, it can be established that there is no credible basis for suggesting that the facts are as asserted and that, thus, the proceedings are bound to fail on the merits, then the inherent jurisdiction of the Court to prevent abuse can be invoked".

80. At para. 20, Clarke J went on to say the following:

"At the same time, it is clear that certain types of cases are more amenable to an assessment of the facts at an early stage than others. Where the case is wholly, or significantly, dependent on documents, then it may be much easier for a court to reach an assessment as to whether the proceedings are bound to fail within the confines of a motion to dismiss".

81. Clarke J continued:

"[21] The allegation made by Mr. Lopes in these proceedings is, of course, one of fact. He asserts that the outcome of his litigation was unjustly determined to his disadvantage by reason of bias, discrimination or corruption on the part of judges. There are a range of legal issues which arise in that context, not least the question of whether judicial immunity from action would afford a defence and whether, even if it does not, the Minister is vicariously liable for the actions of judges. Those questions raise important legal issues but, before coming to those issues, it is necessary that there be a credible case on the facts as to bias, discrimination or corruption.

[23] On the other hand, so far as the inherent jurisdiction of the Court to protect against abuse of process is concerned, the Court can at least consider whether there is a credible basis for suggesting that Mr. Lopes might be able to establish the facts which he asserts. If there is no such basis, then these proceedings are bound to fail and their maintenance must, therefore, be an abuse of process, such that the proceedings ought now to be dismissed. It is true that Hanna J, in dismissing the proceedings, had regard to some of the legal issues which might potentially arise in a claim such as this… However, for reasons which I hope to address, I am satisfied that it would not be appropriate, in all the circumstances of this case, to dismiss the claim sought to be brought by Mr. Lopes by virtue of forming a view that his claim was bound to fail on

the law. Rather, it seems to me that the judgment of Hanna J. should only be upheld if it is appropriate to agree with the conclusions which he reached to the effect that there was no credible basis, on the facts, on which Mr. Lopes could hope to establish bias, discrimination or corruption…”.

82. Counsel indicated that the defendants take a similar approach to that set out by Clarke J in *Lopes*. Although the issue of judicial immunity was addressed in the defendants' written submissions, counsel did not address that issue in his oral submissions; rather, the defendants sought to demonstrate by an analysis of the facts pleaded with particular regard to the documentary record of the DAR for all hearings of the Houston v Doyle proceedings before the first defendant, that there was no credible basis on the facts by which the plaintiff could hope to establish her claims.

83. The defendants therefore argue that the inherent jurisdiction of the court should be exercised to dismiss the proceedings on this basis. They argue in any event that the case is vexatious and has no prospect of success.

The Constitution/the 'Treaties'

84. As we have seen, the plaintiff made a number of claims based on an alleged infringement by the defendants of the Constitution and various international agreements. The plaintiff made no attempt, in either her written or oral submissions, to clarify exactly what case she was making in that regard. It is not appropriate for the court to be required to speculate as to what the plaintiff meant by invoking these various documents, or to in some way "fill in the gaps" to alleviate the deficiencies of the plaintiff's submissions.

85. Having said that, and given that the defendants did address the invocation of the Constitution and the other international agreements in their submissions, some brief comment may be appropriate.

86. In relation to the Constitution, there are a number of pleas in the statement of claim that the first defendant interfered with or infringed the Constitutional rights of the plaintiff: see paras. 45, 46, 52 and 63 of the statement of claim. It does not seem to me that the pleadings disclose any reasonable cause of action for the breach of any constitutional right of the plaintiff; in any event, all of the alleged actions of the first defendant of which the plaintiff complains must have occurred during the course of the various hearings conducted by the first defendant in the Houston v Doyle proceedings, and as such would be set out in the transcripts of the DAR. The plaintiff has appealed the orders made by the first defendant; that appeal has been determined, and the Court of Appeal has expressed the opinion that "there is no basis for any suggestion that the hearing in the High Court was unfair". Any claim based on a breach of the plaintiff's constitutional rights is clearly an attempt to re-litigate the appeal in Houston v Doyle, which has been determined.

87. In relation to the alleged "rule of law violation" contrary to Article 2 of the Treaty on European Union ('**TEU**') pleaded at para. 47 of the statement of claim, it is difficult to see how such a claim could be made out. Article 2 of the TEU is as follows:

> "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. Those values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail".

88. The plaintiff claims a declaration that the first defendant's alleged conduct "constitutes a rule of law violation" contrary to Article 2. The defendants do not accept that, even if an Article 2 violation existed, it would be directly effective in favour of the plaintiff or that such a declaration could be made, as Article 7 TEU requires "a serious breach by a

Member State of the values referred to in Article 2" to be investigated and addressed through the operational mechanisms in Article 7 TEU.

89. In any event, as with the alleged breach of constitutional rights, if there were any Article 2 violation and it were justiciable by the plaintiff, it should have been litigated by way of appeal from the first defendant's orders.

90. At para. 51 of the statement of claim, it is pleaded that the "conduct towards the plaintiff [of the first defendant] as a High Court judge was not in compliance with her obligations expressly and/or implicitly enshrined in each or any of … the European Convention on Human Rights". At para. 62 of the statement of claim, the plaintiff seeks declarations that the conduct of the first defendant was not in compliance with these alleged obligations.

91. As the defendant points out, the European Convention on Human Rights ('**ECHR**') does not have direct effect in Irish law so that the relief sought at para. 62 of the statement of claim is not appropriate. While claims may be made under the European Convention on Human Rights Act 2003, the plaintiff does not make any pleas in this regard. Even if a plea under this Act had been made, or it were suggested that the first defendant had failed to comply with her obligations under that Act – and it is clear to me that there is no such substantiated allegation pleaded – any such failure would have occurred in the Houston v Doyle hearings, with the result that an appeal from the first defendant's orders was the appropriate mechanism by which to raise complaints in this regard. The plaintiff, once again, is attempting to re-litigate an appeal which she lost.

92. At para. 52 of the statement of claim, it is asserted that the first defendant "infringed the rights of the plaintiff including her … rights guaranteed by the Charter of Fundamental Rights of the European Union". Damages are sought in respect of this alleged infringement at para. 63 of the statement of claim. At para. 16 of the statement of claim, the plaintiff pleads

that “the EU Charter of Fundamental Rights, at Chapter VI Justice, Article 47 guarantees the ‘…right to an effective remedy and a fair hearing within a reasonable time by an independent and impartial tribunal previously established by law’”. However, as the defendants point out, Article 51 of the Charter provides that the provisions of the Charter “are addressed to the institutions and bodies of the Union with due regard for the principles of subsidiarity and to the Member State only when they are implementing Union law…”. There was no “Union law” which the first defendant was allegedly “implementing” in Houston v Doyle such as would entitle the plaintiff to invoke the Charter.

93. The plaintiff invokes the Belfast/Good Friday Agreement – more properly the “British-Irish Agreement”, to which is annexed the “Multi-Party Agreement”. It is suggested that the first defendant’s alleged conduct in failing to provide a written judgment or a copy of the DAR somehow infringed these agreements. However, the defendants contend that these agreements do not impose any obligation on the first defendant as a High Court judge, and that those agreements are not in any event justiciable at the suit of the plaintiff and cannot be relied upon in the manner implied in the statement of claim, or to impose some obligation on the first defendant to provide a written copy of the court’s judgment or to provide the DAR or a transcript thereof. The defendants cite provisions of the Agreements in this regard; the plaintiff has not taken issue with the defendant’s analysis.

94. If there was an alleged failure or refusal to provide a written judgment or the DAR, it would have been open to the plaintiff to appeal the first defendant’s decision in that regard. The plaintiff did not do so.

95. At para. 51 of the statement of claim, in addition to the allegations regarding the first defendant’s alleged non-compliance with her obligations under the Constitution and the various international agreements, it is alleged that she was not in compliance with her obligations in accordance with the “constitutional oath” taken by her on being appointed a

judge of the High Court. If the defendants are correct in asserting that there is no credible basis on the facts by which the plaintiff could hope to establish her various claims, it follows that there could be no breach by the first defendant of her judicial declaration pursuant to Article 34.6.1 of the Constitution, even if that were capable of giving rise to a cause of action by a litigant. In any event, a judge could not be guilty of a "breach of oath" in circumstances where her orders were upheld by the Court of Appeal, save for the exception of the *Isaac Wunder* order, the successful appeal of which is sufficient remedy for the plaintiff.

Conclusion on the dismissal application

96. In my view, the defendants must succeed in their application. The factual analysis of the plaintiff's allegations to which I have referred above compels the court to the conclusion that there is no evidential basis for the allegations made by the plaintiff.

97. The analysis of those allegations shows that they have no sustainable basis. The plaintiff availed of her right to appeal the first defendant's orders; it was open to her to raise any issue relating to the conduct by the first defendant of the various hearings. Her appeal was unsuccessful in all but one respect; the Court of Appeal overturned the first defendant's *Isaac Wunder* order, and this was reflected in the costs order made by the Court of Appeal: see [2020] IECA 316. I am satisfied that these were orders made in the normal course of litigation, and do not give rise to a cause of action in favour of the plaintiff.

98. At para. 37 of his judgment, Collins J stated that "in my opinion, Ms Houston has not put any material before the court capable of justifying any suggestion of actual bias on the part of the judge". At para. 40, the court referred to a complaint alleged by the plaintiff to have been made by her about the first defendant to the Chief Justice. Collins J stated at para. 40 of his judgment "…as to the alleged conduct prompting whatever complaint Ms Houston may have made, no evidence whatever of any wrongful or improper conduct on the part of the judge has been put before this Court". At para. 43 of his judgment, Collins J stated that, in

his opinion, there was "no basis for any suggestion that the hearing in the High Court was unfair".

99. I concur entirely with these views. The court will always treat an application for dismissal of proceedings with extreme caution, and on the basis that it is a jurisdiction which is to be sparingly exercised. However, the present proceedings are a mixture of claims which are misconceived, and claims which are simply not borne out by the documentary record – the transcript of the DAR of the various hearings. The plaintiff had the DAR of those hearings played for her in open court. She agreed to the defendants' application for the transcripts of the hearings, and was given a copy of those transcripts at no expense to her. She was invited by this Court – given the nature of some of her claims, and her application to cross-examine the solicitor for the defendants as to the "tone and atmosphere" of the hearings – to identify the portions of the recordings on which she placed particular reliance in support of her claims. Having expressly agreed to do this on 03 October 2023, she ultimately declined to do so. Not only that, but the plaintiff at the hearing, despite the offensive and unnecessary allegations of a personal nature in the statement of claim, did not contest the dismissal application or attempt to justify the manner in which she had prosecuted the proceedings.

100. I am satisfied that there is no basis for alleging "stated misconduct" – even if such were capable of giving rise to a cause of action justiciable at law – or misfeasance in public office, particularly in circumstances where the Court of Appeal heard and determined the appeal of the orders of the first defendant, partially in the plaintiff's favour. Such claims are vexatious and an abuse of process.

101. In all the circumstances, it is clear that the proceedings themselves are frivolous and vexatious, and bound to fail. To the extent that the claims are based on factual assertions relating to misconduct or misfeasance, there is no credible basis for suggesting that the facts are as asserted. I am satisfied that this is an appropriate case in which to grant the reliefs

sought at para. 1 of the notice of motion pursuant to O.19, r.28 of the Rules of the Superior Courts striking out the plaintiff's plenary summons and statement of claim as against the defendants and dismissing the plaintiff's action on the grounds that the pleadings disclose no reasonable cause of action and that the action is frivolous and vexatious.

102. Alternatively, I am satisfied to make an order pursuant to the inherent jurisdiction of this Honourable Court dismissing the plaintiff's action as against the defendants on the grounds that it is bound to fail and/or is frivolous and/or vexatious and/or an abuse of process.

103. The pleadings contain numerous pleas which are unnecessary, scandalous, and which tend to prejudice, embarrass, or delay the fair trial of the action. However, given that I am making orders dismissing the proceedings, I do not propose to give such pleadings any further air or publicity by making formal orders in respect of them. I will not therefore make an order pursuant to para. 3 of the notice of motion granting relief under O.19, r.27 of the Rules of the Superior Courts.

104. Finally, I should say for completeness that no application was made by the plaintiff to me at the hearing of the defendant's application on 06 December 2023 for the "audio" of the DAR. I propose to make an order striking out the plaintiff's motion issued on 30 November 2022 [see para. 7 above] in that regard.

<u>Preliminary Reference of an issue</u>

105. It follows from the orders which I have indicated that I will make that I am not prepared to accede to the plaintiff's request that a reference be made to the European Court of Justice ('**ECJ**').

106. Article 267 of the TEU, which governs references by national courts, is as follows:

> "The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

(a) the interpretation of the Treaties;

(b) the validity of interpretation of acts of the institutions, bodies, offices or agencies of the Union;

where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the court to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the court.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay". [Emphasis added].

107. I do not consider that a reference to the ECJ is necessary to enable me to give judgment. The rationale for the jurisdiction to dismiss proceedings on the basis that they are frivolous and vexatious or bound to fail has been repeatedly set out by the Supreme Court in the decisions to which I have referred above.

108. In any event, no coherent basis or rationale was advanced by the plaintiff to this Court to support the argument that a reference was necessary to enable the court to give judgment. Indeed, I was unable to elicit from the plaintiff a clear answer to my query as to exactly what should be referred to the ECJ, were I of a mind to make a reference.

109. This Court has a discretion whether or not to make a reference: see *CILFIT v Ministerio Della Sanita* Case 283/81 [1982] ECR 3415 at para. 10. I do not propose to exercise my discretion to do so.

Costs or other orders

110. I will conduct a brief hearing in relation to the issue of the costs of the motion and the proceedings, or any other orders which the parties consider necessary, at 10.15am on the 13th day of February 2024.